

AUTHORIZING APPOINTMENT OF A SPECIAL COUNSEL
TO REPRESENT THE SERGEANT AT ARMS IN THE
CASE OF *PRESSLER v. SIMON, ET AL.*

AUGUST 31, 1976.—Ordered to be printed

MR. THOMPSON, from the Committee on House Administration,
submitted the following

REPORT

[To accompany H. Res. 1497]

The Committee on House Administration, to whom was referred the resolution (H. Res. 1497) having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended do pass.

By voice vote, a quorum being present, the Committee adopted on August 31, 1976, a motion to report House Resolution 1497 favorably with an amendment.

AMENDMENT

Strike all after the word "Resolved," and insert in lieu thereof the following:

That the Sergeant at Arms is authorized to employ with the approval of the Speaker and the Chairman of the Committee on House Administration a special counsel to represent the Sergeant at Arms in all civil proceedings relating to the pending action entitled Larry Pressler against William E. Simon, et al., civil action numbered 76-0782 in the United States District Court for the District of Columbia, in which action the Sergeant at Arms is named as a defendant.

SEC. 2. Such expenses as are necessary to employ a special counsel shall be paid from the contingent fund of the House on vouchers signed by the Sergeant at Arms and approved by the Speaker and the Chairman of the Committee on House Administration, and shall not exceed the sum of \$50,000 without the further approval of the Committee on House Administration.

BACKGROUND

On or about May 7, 1976, Congressman Larry Pressler (R-S. D.), initiated litigation, *Larry Pressler, v. William E. Simon, Francis R. Valeo, Kenneth R. Harding*, in the District Court for the District of Columbia, Civil Action No 76-0782, challenging the constitutionality of the Federal Salary Act of 1967 and the Executive Cost of Living

Adjustment Act of 1975. Kenneth R. Harding, Sergeant at Arms of the House of Representatives, was sued as the House Officer dispersing Members' salaries.

Pursuant to 2 U.S.C. 118, Sergeant at Arms Harding requested the Department of Justice to undertake his representation in the matter of *Pressler v. Valeo*, et al. The Department of Justice agreed on May 21, 1976 to provide counsel. On August 2, 1976, the Plaintiff, Representative Pressler, moved for a Summary Judgment alleging, inter alia, that the mechanisms for raising Members' salaries contained in the Federal Salary Act of 1967 and the Executive Cost of Living Act of 1975 are an unconstitutional delegation of Legislative authority to the Executive. A necessary defense against such Motion for Summary Judgment is that the "one house veto" provision in the Federal Salary Act provides sufficient Congressional control on the delegation of Legislative authority to preserve the proper separation of powers.

Subsequent to Plaintiff's Motion for Summary Judgment, the Justice Department moved to intervene as Plaintiff in the case of *Clark v. Valeo*, et al., Civil Action No. 76-1227, U.S. District Court for the District of Columbia, in order to challenge the constitutionality of the "one house veto" provisions of the Federal Election Campaign Act of 1971, as amended. As a result, the Justice Department may be forced to argue both sides of this very significant constitutional issue.

In order to avoid a possible conflict of interest, and to present the fullest defense of the "one house veto" mechanism, it was determined, in consultation with the Department of Justice, that the Sergeant at Arms should retain independent outside counsel.

This Resolution authorizes the Sergeant at Arms, Kenneth R. Harding, to retain independent outside counsel subject to the approval of the Speaker and the Chairman of the Committee on House Administration. The legal fees therefore may not exceed the sum of \$50,000 without the additional approval of the Committee on House Administration. It should be noted that the Secretary of the Senate, Francis Valeo, a Defendant in the *Pressler* case, has retained outside independent counsel.

